

रजिस्टर्ड नं० पी०/एस० एम० 14.



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार, 1 अप्रैल, 1987/11 चैत्र, 1909

हिमाचल प्रदेश सरकार

हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचनायें

शिमला-4, 30 मार्च, 1987

संख्या 1-16/87-वि०स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, पंजाब अग्रकय (हिमाचल प्रदेश निरसन) विधेयक, 1987 (1987 का विधेयक

संख्यांक 7) जो दिनांक 30 मार्च, 1987 को हिमाचल प्रदेश विधान सभा में पुरःस्थापित हो गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने हेतु प्रेषित किया जाता है ।

विश्वेश्वर वर्मा,
सचिव ।

पंजाब अग्रक्रय (हिमाचल प्रदेश निरसन) विधेयक, 1987

(विधान सभा में यथा पुरःस्थापित)

हिमाचल प्रदेश राज्य में यथा लागू दि पंजाब प्री-एम्पशन ऐक्ट, 1913 (1913 का 1) का निरसन करने के लिए—

विधेयक 1

भारत गणराज्य के अड़तीसवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो:—

1. (1) इस अधिनियम का संक्षिप्त नाम पंजाब अग्रक्रय (हिमाचल प्रदेश निरसन) अधिनियम, 1987 है । संक्षिप्त नाम और प्रारम्भ ।

(2) यह तुरन्त प्रवृत्त होगा ।

2. पंजाब अग्रक्रय (हिमाचल प्रदेश निरसन) अधिनियम, 1987 के प्रारम्भ की तारीख को और से कोई भी न्यायालय अग्रक्रय के लिए किसी वाद में डिक्री पारित नहीं करेगा । अग्रक्रय वाद में डिक्री पारित करना वर्जित ।

3. हिमाचल प्रदेश में, प्रथम नवम्बर, 1966 से ठीक पूर्व समाविष्ट क्षेत्रों में निरसन और व्यावृत्तियाँ ।
 और पंजाब पुनर्गठन अधिनियम, 1966 की धारा 5 के अधीन हिमाचल प्रदेश में जोड़े गए राज्य क्षेत्रों में यथा प्रवृत्त दि पंजाब प्री-एम्पशन ऐक्ट, 1913 एतद्वारा निरसित किया जाता है :

परन्तु ऐसा निरसन निम्नलिखित को प्रभावित नहीं करेगा—

(क) कोई डिक्री जो इस प्रकार निरसित अधिनियम के अधीन पारित की गई है और अंतिम हो गई है;

(ख) इस प्रकार निरसित अधिनियम के अधीन किए गए निक्षेप या दी गई प्रतिभूति के प्रतिदाय के लिए कोई दावा; या

(ग) इस प्रकार निरसित अधिनियम के अधीन लागत के उन्मोचन के लिए उपगत कोई व्यय ।

1966 का 31
1913 का 1

उद्देश्यों और कारणों का कथन

दि पंजाब प्री-एम्पशन ऐक्ट, 1913, हिमाचल प्रदेश को इसके निर्माण पर, हिमाचल प्रदेश (विधियों का लागू होना) आदेश, 1948 द्वारा लागू किया गया था। यह अधिनियम भूतपूर्व बिलासपुर राज्य में समाविष्ट क्षेत्रों में और पंजाब पुनर्गठन अधिनियम, 1966 की धारा 5 के अधीन हिमाचल प्रदेश में जोड़े गए क्षेत्रों में भी प्रवृत्त है। देश की स्वतन्त्रता के पश्चात्, विभिन्न कृषि सुधार हो चुके हैं। अग्रक्रय अधिकार सदैव अनाधिकृत माना गया है। इसमें संदेह नहीं किया जा सकता कि यह अधिकार पुराना और उत्पत्ति और स्वरूप में सामन्ती (जागीरी) है। सगोत्रता पर आधारित अग्रक्रय अधिकार, उच्चतम न्यायालय द्वारा विद्यमान संवैधानिक ढांचे से असंगत ठहराया गया है। इस अधिनियम को पंजाब राज्य में, जहां यह उद्भूत हुआ था, पहले ही निरसित किया जा चुका है। इसलिए हिमाचल प्रदेश में, यथा प्रवृत्त दि पंजाब प्री-एम्पशन ऐक्ट, 1913 को निरसित करना समीचीन समझा गया है। ऐसा निरसन आधुनिक विचारण के अनुरूप होगा।

यह विधेयक उपर्युक्त उद्देश्य की प्राप्ति के लिए है।

शिमला :

मार्च, 30; 1987.

धर्म सिंह,
प्रभारी मन्त्री।

[Authorised English text of the Punjab Agra-Kraya (Himachal Pradesh Nirsan) Vidheyak, 1987 (1987 ka Vidheyak Sankhyank 7) as required under Clause (3) of Article 348 of the Constitution of India].

Bill No. 7 of 1987.

**THE PUNJAB PRE-EMPTION (HIMACHAL PRADESH REPEALING)
BILL, 1987**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to repeal the Punjab Pre-emption Act, 1913 (Act No. 1 of 1913) in its application to the State of Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Punjab Pre-emption (Himachal Pradesh Repealing) Act, 1987.

Short title and commencement.

(2) It shall come into force at once.

2. On and from the date of commencement of the Punjab Pre-emption (Himachal Pradesh Repealing) Act, 1987 no court shall pass a decree in any suit for pre-emption.

Bar to pass decree in suit for pre-emption.

3. The Punjab Pre-emption Act, 1913 as in force in the areas comprised in Himachal Pradesh immediately before 1st November, 1966 and in the territories added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 is hereby repealed:

Repeal and savings.

Provided that such repeal shall not affect—

- (a) any decree which has been passed under the Act so repealed and has become final;
- (b) any claim for the refund of the deposit made or a security furnished under the Act so repealed; or
- (c) any expenditure incurred in the discharge of costs under the Act so repealed.

1 of 1913

31 of 1966

STATEMENT OF OBJECTS AND REASONS

The Punjab Pre-emption Act, 1913 was made applicable to Himachal Pradesh on its formation *vide* the Himachal Pradesh (Application of Laws) Order, 1948. This Act is also in force in the areas which comprised in the erstwhile Bilaspur State and in those areas which were added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966. After the independence of the country, several agrarian reforms have taken place. The right of pre-emption has always been considered to be piratical in nature. It cannot be doubted that this right is antiquated and feudal in origin and in character. The right of pre-emption based on consanguinity has been held to be inconsistent with the subsisting constitutional scheme by the Supreme Court. This Act has already been repealed in the State of Punjab where it originated. It has, therefore, been considered expedient to repeal the Punjab Pre-emption Act, 1913 as in force in the State of Himachal Pradesh. Such a repeal will be in conformity with the modern thinking.

This Bill seeks to achieve the aforesaid object.

DHARAM SINGH,
Minister-in-charge.

SHIMLA:
The 30, March, 1987.

FINANCIAL MEMORANDUM

Nil

MEMORANDUM REGARDING DELEGATED LEGISLATION

Nil

Shimla-4, the 30th March, 1987

No. 1-18/87-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business of the Himachal Pradesh Legislative Assembly, 1973, the Himachal Pradesh Ceiling on Land Holdings (Amendment) Bill, 1987 (Bill No. 10 of 1987) having been introduced on the 30th March, 1987, in the Himachal Pradesh Vidhan Sabha, is hereby published in the Gazette.

V. VERMA,
Secretary.

Bill No. 10 of 1987.

**THE HIMACHAL PRADESH CEILING ON LAND HOLDINGS
(AMENDMENT) BILL, 1987**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

*further to amend the Himachal Pradesh Ceiling on Land Holdings Act, 1972
(Act No. 19 of 1973).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the
Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Ceiling on Land
Holdings (Amendment) Act, 1987.

Short title,
and com-
mencement.

19 of 1973 1972. (2) It shall be deemed to have come into force with effect from the date
of commencement of the Himachal Pradesh Ceiling on Land Holdings Act,

2. In section 3 of the Himachal Pradesh Ceiling on Land Holdings Act,
1972 (hereinafter called the principal Act),—

Amendment
of section
3.

(i) after the existing clause (e), the following clauses (ee) and (eee)
shall be inserted, namely :—

“(ee) “handicapped person” means a crippled, physically or medi-
cally deficient person whose annual income from all sources
does not exceed rupees seven thousand and five hundred and
who, on account of injury, disease or congenital deformity, is
substantially prevented from or is incapable of leading a normal
life or earning full wages for the work in which he is employed;
or obtaining or keeping employment or undertaking work on
his own, of a kind in view of that injury, disease or deformity
which work would have suited his age, experience and quali-
fications.

Explanation.—For the purposes of this clause, a person who has incurred
physical disablement to the extent of fifty per cent or more shall
be deemed to be substantially incapable or disabled person;

(eee) “houseless person” means a person who owns no house or site
to construct a house:

Provided that a person whose father is alive or whose annual income
from all sources exceeds Rs. 3,000/- shall not be deemed to be a
houseless person;”;

- (ii) for the sign “;” occurring at the end of clause (h), the sign “:” shall be substituted and thereafter the following proviso shall be added, namely:—

“Provided that a person whose father is alive or whose annual income from all sources exceeds Rs. 3000/- shall not be deemed to be a landless person; and

- (iii) after the existing clause (k), the following clause (l) shall be added, namely:—

“(l) “other eligible person” means a person,—

- (i) who, holding for agricultural purposes land less than one acre whether as an owner or a tenant, earns his livelihood principally by manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally ;
- (ii) whose father is not alive; and
- (iii) whose annual income from all sources does not exceed Rs. 3,000/-;

and shall not include a person who holds a share or a portion of an estate jointly owned or cultivated by two or more persons;”.

Amendment
of section
15.

3. For sub-section (2) of section 15 of the principal Act, the following sub-section shall be substituted, namely:—

“(2) The State Government may, by notification in the Official Gazette, frame a scheme for utilising the surplus area vested in the State Government by allotment—

- (a) to a landless person or any other eligible person;
 - (b) for allotment of a site to a handicapped or houseless person for the construction of a house ;
- and the allottee shall pay amount—

- (i) for the land allotted to him, at the rate of ninety-five times the revenue plus rates and cesses, thereof; and
- (ii) for building, structure or tube-well, if any, at 50% of the market price of such building, structure or tube-well:

Provided that if the holding or part thereof comprising surplus area is not assessed to land revenue, the land revenue on such land shall be construed to be assessed as on similar land in the estate and if not available in the estate then on the adjoining estate or estates, as the case may be :

Provided further that the waste land shall be treated as ‘banjar’ land for the purposes of assessment of land revenue and determination of the amount.”

Insertion of
section 15-A.

4. After section 15 of the principal Act, the following new section 15-A shall be inserted, namely:—

“15-A. Utilisation of land for development of the State.—Notwithstanding anything contained in section 15 of the Act, the State Government may utilize any area of the land vested in it under

this Act by lease to any person or by transfer to any Department of the Government in the interests of the development of the State, if the State Government is satisfied that there are sufficient reasons to do so :

Provided that when land is not used by a person for the purpose for which it has been leased, the lease shall stand terminated free from all encumbrances and the Government shall re-enter on the demised premises, and the lease money, if paid to the Government, shall be forfeited and no person shall be entitled to any compensation for any improvement made and for any building constructed thereon."

5. Where any allotment of land made under any scheme, framed under the principal Act, is found to be inconsistent with the provisions made in the principal Act, as amended by sections 2 and 3 of this Act, then notwithstanding anything to the contrary contained in any judgment, decree or order of any court; or any other law for the time being in force, it shall be lawful for an officer especially empowered by the State Government in this behalf, to cancel such allotment and take possession of the land so allotted :

Savings.

Provided that no order under this section shall be passed without affording an opportunity of being heard to the allottee of land in question.

STATEMENT OF OBJECTS AND REASONS

In 1975 a massive programme of allotment of land was launched by the Government under the 20-Point Programme enunciated by the Prime Minister. Under this programme all the landless agricultural labourers who had no land or had land less than an acre were to be allotted land upto an acre. The latter category was called "other eligible persons".

Among the sources from which land was and is being allotted to both the categories is surplus area vested in the Government under the Himachal Pradesh Ceiling on Land Holdings Act, 1972.

The definition of expression "landless person" as given in that Act, at present, was supplemented by instructions issued in October, 1975 laying down that a person having his father alive and income exceeding Rs. 3,000/- per annum from all sources, shall not be a landless person for the purpose of allotment of land.

The allotment of land has been made in the light of these guidelines and allotments found to have been made in violation of these administrative instructions had been cancelled by the competent authority.

This arrangement has, however, not found favour with the civil courts which have held that the definition of expression "landless person" as given in the Act does not embody the conditions prescribed under the instructions. It has, therefore, become necessary to amend the above definition and make consequential provisions to cancel the allotments of lands obtained by certain unscrupulous persons by concealing the facts at the relevant time.

Besides, the State Government has also decided that a handicapped person having 50% or more disability should be granted a house-site for construction of his own house. Further more, in the surplus area now remaining with the Government, over about one and a half lakh acres of land is unfit for allotment. This area shall have to be utilised for other purposes, and can be more profitably utilized for the development of tourism and industrial purposes. In public interest and to explore the possibilities of development of the tourism and industrial activities it had been decided to make provisions in the Act for the utilisation of surplus land for development purposes.

All these factors have necessitated amendments in the said Act.

This Bill seeks to achieve the aforesaid objectives.

SHIMLA:
The 30th, March, 1987.

DHARAM SINGH,
Minister-in-charge.

FINANCIAL MEMORANDUM

Nil

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to amend section 15 of the principal Act and clause 4 seeks to insert new section 15-A in the Act to empower the State Government to frame scheme(s) for the utilisation of surplus area for developmental activities, in addition to its allotment to landless and other eligible persons, to raise their holdings upto an acre and house-sites to handicapped and houseless persons. This delegation is essential and normal in character.

Shimla-4, the 30th March, 1987

No. 1-17/87-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business of the Legislative Assembly, 1973, the Himachal Pradesh Village Common Lands Vesting and Utilisation (Amendment) Bill, 1987 (Bill No. 9 of 1987) having been introduced on the 30th March, 1987, in the Himachal Pradesh Vidhan Sabha, is hereby published in the Gazette.

V. VERMA,
Secretary.

Bill No. 9 of 1987.

**THE HIMACHAL PRADESH VILLAGE COMMON LANDS VESTING
AND UTILISATION (AMENDMENT) BILL, 1987**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

*further to amend the Himachal Pradesh Village Common Lands Vesting and
Utilisation Act, 1974 (Act No. 18 of 1974).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the
Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Village Common
Lands Vesting and Utilisation (Amendment) Act, 1987.

Short title
and com-
mencement.

18 of 1974

(2) It shall be deemed to have come into force with effect from the date
of commencement of the Himachal Pradesh Village Common Lands Ves-
ting and Utilisation Act, 1974.

18 of 1974

2. In section 2 of the Himachal Pradesh Village Common Lands Vesting
and Utilisation Act, 1974 (hereinafter called the principal Act),—

Amendment
of section 2.

(i) after the existing clause (a), the following clauses (aa) and (aaa) shall
be inserted, namely:—

“(aa) “handicapped person” means a crippled, physically or medi-
cally deficient person whose annual income from all sources
does not exceed rupees seven thousand and five hundred and who,
on account of injury, disease or congenital deformity, is sub-
stantially prevented from or is incapable of leading a normal
life or earning full wages for the work in which he is employed;
or obtaining or keeping employment or undertaking work on
his own of a kind in view of that injury, disease or deformity which
work would have suited his age, experience and qualification.

Explanation.—For the purposes of this clause, a person who has
incurred physical disablement to the extent of fifty per cent or
more shall be deemed to be substantially incapable or disabled
person.”

“(aaa) “houseless person” means a person who owns no house or
a site to construct a house for himself :

Provided that a person whose father is alive or whose annual income
from all sources exceeds Rs. 3,000/- shall not be deemed to be a
houseless person;”

- (ii) for the sign “;” occurring at the end of clause (c), the sign “:” shall be substituted and thereafter the following proviso shall be added, namely:—

“Provided that a person whose father is alive or whose annual income from all sources exceeds Rs. 3000/- shall not be deemed to be a landless person ;” and

- (iii) after the existing clause (d), the following clause (dd) shall be added,—

“(dd) “other eligible person” means a person,—

(i) who, holding land for agricultural purposes less than an acre whether as an owner or a tenant, earns his livelihood principally by manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally;

(ii) whose father is not alive; and

(iii) whose annual income from all sources does not exceed Rs. 3000/-;

and shall not include a person who holds a share or a portion of an estate jointly owned or cultivated by two or more persons.”

Amendment of section 8. 3. For clause (b) of sub-section (1) of section 8, the following clause (b) shall be substituted, namely:—

“(b) the remaining land—

(i) for allotment to a landless person or any other eligible person; or

(ii) for allotment of site to a handicapped or houseless person for the construction of a house;

under a scheme to be framed by the State Government by notification in the Official Gazette and the allottee shall pay an amount at the rate of forty-eight times of the land revenue and rates and cesses chargeable on the land allotted to him under the said scheme, either in lump sum or in six monthly instalments not exceeding four.”

Savings.

4. Where any allotment of land made under any scheme, framed under the principal Act, is found to be inconsistent with the provisions made in the principal Act, as amended by sections 2 and 3 of this Act, then notwithstanding anything to the contrary contained in any judgement, decree or order of any court, or any other law for the time being in force, it shall be lawful for an officer especially empowered by the State Government for this purpose, to cancel such allotment and take possession of the land so allotted :

Provided that no order under this section shall be passed without affording an opportunity of being heard to the allottee of the land in question.

STATEMENT OF OBJECTS AND REASONS

In 1975, a massive programme of allotment of land was launched by the Government under the 20-Point Programme enunciated by the Prime Minister. Under this programme, all the landless agricultural labourers who had no land or had land less than an acre, were to be allotted land upto an acre. The latter category was called "other eligible persons".

Among the sources from which land was and is being allotted to both the categories, is the village common land vested in the Government under the Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974.

The definition of the expression "landless person" as given in that Act at present, was supplemented by instructions issued in October, 1975 laying down that a person having his father alive and income exceeding Rs. 3,000/- per annum from all sources shall not be a landless person for the purposes of allotment of land.

The allotment of land has been made in the light of these guidelines and allotments found to have been made in violation of these administrative instructions had been cancelled by the competent authority.

This arrangement has, however, not found favour with the Civil Courts which have held that the definition of expression "landless person" as given in the Act does not embody the conditions prescribed under the administrative instructions. It has, therefore, become necessary to amend the above definition and make consequential provisions to cancel the allotment of lands obtained by certain unscrupulous persons by concealing facts at the relevant time.

Besides, the State Government has also decided that a handicapped person having 50% or more disability should be granted house-site for construction of his house. Then there may be other purposes also for which land is often required. At present there is no enabling provision in the Act on this score. Section 8 has, therefore, to be amended suitably.

This Bill seeks to achieve the aforesaid objectives.

SHIMLA :
The 30th March, 1987.

DHARAM SINGH,
Minister-in-charge.

FINANCIAL MEMORANDUM

Nil

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 and 3 of the Bill seek to amend sections 2 and 8 of the principal Act to authorise the State Government to frame scheme(s) for the utilization of area vested in the State Government under the principal Act, by allotment of house-sites to handicapped and disabled persons in addition to its allotment to landless and other eligible persons, to raise their holdings upto an acre.

